

11/10/14

Golden Shovel Agency Agreement to Provide the Economic Gateway Service

This Agreement for website services ("Agreement") is dated 10.31.2014 by and between Golden Shovel Agency, LLC, 43 East Broadway, Suite 105, Little Falls, Minnesota 56345 ("Golden Shovel"), and Woodbury County Department of Rural Economic Development ("Client").

1. Services

A. *Website*. Golden Shovel agrees to provide Client with the "Economic Gateway" service through a website ("Website") with the following features:

***Services:**

- **Planning & Custom Design**
- **Content Management System**
 - *Page Adding & Editing Functionality*
 - *Social Media Integration*
 - *User Training*
 - *30 Hours Website Content Population*
 - *Search, Tracking & Report*
- **GateKeeper Services:**
 - **Strategy Development**
 - **Initial Setup & Training**
 - **Maintenance & Reports**
 - *Golden Touch* customer support & consultation
- **Maintenance:**
 - **Hosting**
 - **Training**
 - **Software Updates**

***Modules:**

- **Homepage Showcase**
- **News & Events**
- **LocationOne Integration**
- **Business Directory**
- **Community Profiles**
- **Projects Directory**
- **Incentives Directory**
- **Resource Library**
- **Staff Directory**
- **Contact Form Manager**
- **Secure Board Section**
- **Fast Facts**
- **Translation Tool**
- **Mobile Version**

** Golden Shovel does not provide Email Hosting services. Client will be responsible for maintaining Email Hosting services with the service provider that best suits their needs according to their requirements.*

General Assumptions:

1. Golden Shovel and its subcontractors will develop all aspects of the proposed application unless otherwise noted and will retain ownership of programming code.
2. When third-party solutions (Google, etc.) are integrated, it is assumed that Client accepts all

applicable Terms and Conditions.

3. Client will be responsible for all website administrative functions including supplying and entering copy, photos and other website content unless otherwise noted.
4. The parties acknowledge that Golden Shovel submitted a proposal ("Proposal") in response to the Request for Proposal – Website and Online Marketing Campaign for the Woodbury County Rural Economic Development Department dated September 2013 ("RFP"). Said RFP and Proposal are attached hereto and by this reference made a part hereof. Golden Shovel will perform its obligations as set forth in the Proposal.

B. *Maintenance.* Golden Shovel or its subcontractors will host the Website and will ensure that the site is up at least 99% of the time or as is commercially reasonable.

C. *Support.* Golden Shovel will provide email and phone customer support on business days between 8:00 a.m. and 5:00 p.m. Central Time, with a 36 hour maximum response time.

2. Payment for Services

For creation of the website with the services and modules set forth above, Client shall pay Golden Shovel the sum of **\$9,500, with one-half of such sum (\$4,750) payable upon execution of this Agreement and the final half (\$4,750) payable when the website is soft launched.** Client shall pay Golden Shovel the sum of **\$9,500 annually in one single installment,** for renewal of services (hosting, maintenance, technical support and Gatekeeper service) **at soft launch anniversary.**

- *Client will be responsible for domain registration and any correspondent fee. Client will own the URL and Golden shovel will host it.*

Assistance with content changes, is provided through the GateKeeper service after soft launch. An allotment of 4 hours/month is available to Client for assistance on selected changes. If more than the available content assistance hours are required after website is soft launched, then a list of all required content changes must be provided by the client for review of feasibility and estimation will be provided to client.

Design changes required after soft launch, must be listed too, for review of feasibility. Additional features or changes requested by client, such as custom elements integration, third-party software/updates or changes out of the scope of services included as part of the Gateway modules above described that may require additional development, will be reviewed for feasibility and estimation will be provided to client.

The agreed-upon work will be estimated and billable at a rate of \$150/hour. Any major changes to the project will require an addendum and no changes or additions will be made without Client's consent.

In addition to the foregoing fees, Client agrees to pay any sales, use or value-added taxes, if any, applicable to the services provided hereunder. Payment is due upon receipt of invoice, and interest of 1.5% per month will be added to any unpaid balance 30 days after payment is due.

3. Relationship of Parties

Golden Shovel is an independent contractor and not an employee or affiliate of Client. No partnership,

joint venture franchise or employment is created by this Agreement, and each party is responsible for providing benefits for its own employees, for paying its own taxes and expenses, and for maintaining its own books and records regarding the same.

4. Confidentiality

A. "Confidential Information" means any and all information related to the business or affairs of Golden Shovel or Client, including without limitation the terms of this Agreement and each party's research, development, products, methods of manufacture or process, means of development, trade secrets, business plans, customers, finances, or personnel data. "Confidential Information" does not include any information: 1) which the receiving party ("Recipient") rightfully knew before it was disclosed by the disclosing party ("Discloser"); 2) which has become publicly known through no wrongful act of Recipient; 3) which Discloser intends to make public through this Agreement; or 4) which the Recipient developed independently.

B. All Confidential Information remains the property of Discloser, and no license or other right in any Confidential Information is granted to Recipient by this Agreement. Recipient agrees not to disclose any Confidential Information to any third party or otherwise, and to take all reasonable precautions to prevent its unauthorized dissemination, both during and after the term of this Agreement. Upon Discloser's written request, Recipient agrees to return to Discloser all Confidential Information, including but not limited to all computer programs, documentation, notes, plans, drawings, and copies thereof.

C. Notwithstanding the foregoing, the parties acknowledge that Client is a governmental body and both parties must comply with the Iowa Open Records Act, Code of Iowa, Chapter 22. Golden Shovel shall treat any private or confidential government data in accordance with the Act.

5. Ownership of Work Product

Client retains ownership rights in all data, information, drawings, pictures or writings it provides Golden Shovel under this Agreement ("Client Data"), and represents that it has the necessary legal rights in any intellectual property associated with the Client Data. Except for the Client Data, all software programs, means of development, works, derivative works, products, designs and other results of the services performed by Golden Shovel in connection with this Agreement, including the Website ("Golden Shovel Work Product"), shall be the sole property of Golden Shovel or its subcontractors, except that Client is hereby granted a non-exclusive, limited license to use the Golden Shovel Work Product for the purposes intended by this Agreement, but for no other purpose.

6. Indemnification

To the extent permitted by Iowa law each party agrees to defend and indemnify the other party and their respective officers, directors, shareholders, employees, agents and affiliates, from all claims, demands, causes of action, costs, liability, expenses, damages, and amounts reasonably paid in settlement to the extent caused by the indemnifying party's acts, errors, omissions or breaches of this Agreement.

7. Term and Termination

This Agreement shall continue until terminated, and termination may be effected only as follows:

1. By either party by written notice to the other party if a receiver shall have been appointed over the whole or any substantial part of the assets of the other party, a petition or similar document is

filed by the other party initiating any bankruptcy or reorganization proceeding or such a petition is filed against the other party and such proceeding shall not have been dismissed or stayed within sixty (60) days after such filing;

2. By either party upon written notice if the other party has materially breached the terms of this Agreement and fails to cure such breach within ten (10) business days after receipt of written notice of such default; or
3. By either party upon thirty (30) days advance written notice to the other party (subject to any fee modifications as set forth in section 2 above).

In the event of termination by either party, the Client shall be obligated to pay only for actual services provided by Golden Shovel and for expenditures incurred with the Client's approval. If agreement is terminated by Client within the specified term time of services, Golden Shovel will provide a refund for the prorated amount of unused services.

The provisions of this Agreement which by their nature are intended to survive termination or expiration of this Agreement shall survive expiration or termination of this Agreement, including without limitation the rights and obligations set forth in sections 2, 3, 4, 5, 6, 8, 9, and 11.

8. Disclaimer of Warranties and Limitation of Liability

Except as expressly stated in this Agreement, the Website is provided without warranty, express or implied, including without limitation the implied warranties of merchantability and fitness for a particular Shovel Group") are not liable to Client for any indirect, incidental, special or consequential damages incurred or suffered by Client arising out of or in connection with this Agreement, including without limitation lost revenue, loss of income or loss of business advantage, even if a party has been advised of the possibility of such damages.

9. Mediation, Arbitration; Governing Law and Venue; Equitable Relief

In an effort to resolve any conflicts that arise out of the services under this Agreement, all disputes between Golden Shovel Group and Client arising out of or relating to this Agreement shall be submitted to nonbinding mediation prior to commencing arbitration or litigation.

This Agreement is made in Iowa and shall be governed by and construed in accordance with the laws of the State of Iowa without reference to choice of law principles.

10. Entire Agreement, No Additional Terms

This is the entire Agreement between the parties with respect to its subject matter and supersedes all prior agreements. All additions or amendments to this Agreement must be in writing and signed by the party sought to be bound.

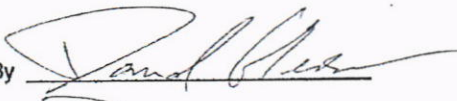
11. Other Provisions

Neither this Agreement nor any part may be assigned, sublicensed or otherwise transferred by either party without the other party's prior written consent. • This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of the parties. • If any provision of this Agreement is found to be void, invalid, unenforceable or illegal, the validity and enforceability of the other provisions will not be affected and any unenforceable provision shall be modified and interpreted so as to best accomplish the intent of such provision. • Neither party shall be deemed to be liable for any provisions under this Agreement for failures in performance resulting from acts or events beyond the reasonable control of the party including, but not limited to, delays in transportation, storms or extreme weather conditions, fire,

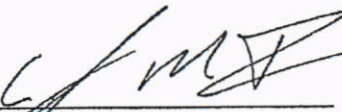
explosion, flood, strike, riot, or unavailability of communications, power, or telephone lines, supplies, or service, delay in delivery, failure or malfunction of equipment or of software, or similar catastrophe, or other acts of God. • Failure to enforce any provision of this Agreement is not a waiver of the provision or of the right to enforce the provision later. • The headings and captions are inserted for convenience only and do not constitute a part of the Agreement. • This Agreement may be signed in counterpart.

IN WITNESS WHEREOF, Woodbury County Department of Rural Economic Development and Golden Shovel Agency, LLC have executed this Agreement on the dates set forth below, to be effective as of the day and year first set forth above.

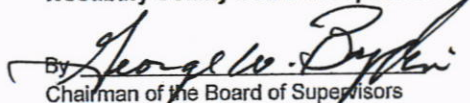
Woodbury County Department of Rural
Economic Development

By 
Its Director
Date: 11/6/14

Golden Shovel Agency, LLC

By 
Its VP of Sales
Date: 11-3-14

Woodbury County Board of Supervisors

By 
Chairman of the Board of Supervisors
Date: 11-10-14